

JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

Curtis Brunk, Individually and on Behalf of all Others Similarly Situated

DEFENDANTS

Matson Navigation Company, Inc., Alexander & Baldwin, Inc., and Horizon Lines, LLC

(b) County of Residence of First Listed Plaintiff Hawaii
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Laurence D. King
Kaplan Fox & Kilsheimer LLP
350 Sansome St., Suite 400
SF, CA 94104 Tel: 415-772-4700

Attorneys (If Known)

E-filing

BZ ADR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus: <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 460 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property					

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Sherman Act Sec. 1, 15 U.S.C. Sec. 1

Brief description of cause:

Unlawful price setting in violation of Sherman Act Sec. 1, 15 U.S.C. Sec. 1

VII. REQUESTED IN COMPLAINT:
☒ CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F.R.C.P. 23
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

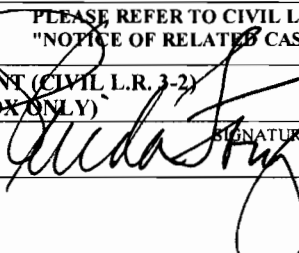
PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". See attachment A hereto.

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)☐ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

June 18, 2008

SIGNATURE OF ATTORNEY OF RECORD



008-3010 BZ

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

*Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ATTACHMENT A TO CIVIL COVER SHEET

Steinberg, et al. v. Matson Navigation Company, Inc., et al.

3:08-cv-02402-VRW (N.D. Cal. filed May 9, 2008)

Acutron, Inc. v. Matson Navigation Company, Inc., et al.

3:08-cv-02600-VRW (N.D. Cal. filed May 22, 2008)

50th State Distributors, Inc. v. Matson Navigation Company, Inc., et al.

3:08-cv-02603-VRW (N.D. Cal. filed May 23, 2008)

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[Additional Counsel Appear on Signature Page]

UNITED STATES DISTRICT COURT**NORTHERN DISTRICT OF CALIFORNIA**CURTIS BRUNK, Individually and on
Behalf of all Others Similarly Situated,

Plaintiff,

v.

MATSON NAVIGATION COMPANY,
INC., ALEXANDER & BALDWIN, INC.,
and HORIZON LINES, LLC,

Defendants.

Civil Action No.

CV 08**3010****CLASS ACTION COMPLAINT****BZ****JURY TRIAL DEMANDED**

Plaintiff, individually and on behalf of a class of all those similarly situated, brings this action for damages and injunctive relief under the antitrust laws of the United States against defendants, demanding a trial by jury, and complaining and alleging as follows:

Nature of The Case

1. This lawsuit is brought as a class action on behalf of all individuals and entities who purchased Domestic Noncontiguous Off Shore Trades Services (defined herein) for trade routes between Hawaii and the continental United States, or its territories and possessions (the "Hawaii trade routes") (collectively, "Hawaii shipping services"), directly from defendants, their predecessors, parents, or controlled subsidiaries and affiliates from at least as early as May 23, 2004, or earlier. Plaintiff alleges that during the Class Period (defined herein) the defendants conspired to allocate markets or engage in other anticompetitive conduct concerning Hawaii shipping services. Because of defendants' unlawful conduct, plaintiff and

1 other class members paid artificially inflated prices for Hawaii shipping services, and as a
2 result, have suffered antitrust injury to their business or property.

3 2. Specifically, this case focuses on defendants' unlawful agreements to, *inter alia*,
4 increase and fix fuel and other surcharges (which account for approximately 20% of
5 defendants' revenue), and decrease capacity to bolster prices.

6 3. Fuel surcharges have moved in lockstep since 1999, with defendants Matson and
7 Horizon, by agreement, imposing an identical or nearly identical surcharges. However, the
8 lockstep changes in fuel surcharges, which are calculated as a percentage of revenue, make no
9 economic sense as defendants have different utilization rates and cost structures. The lockstep
10 nature of the fuel surcharges, combined with defendants' differing cost structures, belies any
11 argument that the surcharges are the result of anything other than defendants' collusion.

12 4. Similarly, defendants had unique control over capacity in the Hawaii market and
13 agreed to carry each other's extra cargo at discount prices. Absent this agreement, each
14 defendant would have needed to increase its own capacity, and that increased capacity would
15 have placed downward pressure on prices.

16 **Jurisdiction and Venue**

17 5. This action is instituted under Sections 4 and 16 of the Clayton Act, 15 U.S.C.
18 §§ 15 and 26, to recover treble damages and costs of suit, including reasonable attorneys' fees,
19 against defendants for the injuries sustained by plaintiff and the members of the class by reason
20 of the violations, as hereinafter alleged, of Section 1 of the Sherman Act, 15 U.S.C. § 1.

21 6. This action is also instituted to secure injunctive relief against defendants to
22 prevent them from further violations of Section 1 of the Sherman Act, as hereinafter alleged.

23 7. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1337 and by
24 Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26.

25 8. Venue is found in this district pursuant to Sections 4, 12 and 16 of the Clayton
26 Act, 15 U.S.C. §§ 15, 22 and 26 and 28 U.S.C. § 1391(b), (c) and (d). Venue is proper in this
27 judicial district because during the Class Period one or more of the defendants resided,
28 transacted business, was found, or had agents in this district, and because a substantial part of

1 the events giving rise to plaintiff's claims occurred, and a substantial portion of the affected
2 interstate trade and commerce described below has been carried out, in this district.

3 9. Defendants, on information and belief, maintain offices, have agents, transact
4 business, or are found within this judicial district.

5
6 **Plaintiff**

7 10. Plaintiff Curtis Brunk was at all relevant times a resident of Hawaii. During the
8 relevant time period, plaintiff purchased Hawaii shipping services from a defendant. The
9 prices paid by plaintiff for Hawaii shipping services were, as a result of the conspiracy herein
10 alleged, higher than they otherwise would have been, and as a result of the alleged conspiracy,
11 plaintiff was injured by reason of the antitrust violations alleged herein.

12 **Defendants**

13 11. Defendant Matson Navigation Company, Inc. ("Matson") is a Hawaiian
14 corporation with its principal place of business in Oakland, California. Matson is a wholly-
15 owned subsidiary of Defendant Alexander & Baldwin, Inc. Matson is a principal provider of
16 Hawaii shipping services. Defendant Matson marketed and/or sold Hawaii shipping services
17 in this district and the United States and its territories and possessions during the Class Period.

18 12. Defendant Alexander & Baldwin, Inc. ("A&B") is a Hawaiian corporation with
19 its principal place of business in Honolulu, Hawaii. A&B is a multi-industry corporation
20 whose ocean transportation operations are conducted by its wholly-owned subsidiary Matson.
21 By and through Matson, A&B sold Hawaii shipping services in this district and the United
22 States and its territories and possessions during the Class Period.

23 13. Defendant Horizon Lines, LLC ("Horizon"), is a Delaware limited liability
24 company with its principal place of business in Charlotte, North Carolina. Horizon is a
25 wholly owned operating subsidiary of Horizon Lines, Inc., a Delaware corporation with its
26 principal place of business in Charlotte, North Carolina. Defendant Horizon marketed and/or
27 sold Hawaii shipping services in this district and the United States and its territories and
28 possessions during the Class Period.

1 14. Whenever in this Complaint reference is made to any act, deed or transaction of
2 any corporation, the allegation means that the corporation engaged in the act, deed or
3 transaction by or through its officers, directors, agents, employees or representatives while
4 they were actively engaged in the management, direction, control or transaction of the
5 corporation's business or affairs.

6 15. Various other persons, firms and corporations, not named as defendants in this
7 complaint, have participated as co-conspirators with defendants in the violations alleged herein,
8 and aided, abetted and performed acts and made statements in furtherance of the conspiracy.

9 **The Jones Act**

10 16. For purposes of this complaint, "Domestic Noncontiguous Off Shore Trades
11 Services" are merchandise shipping services, primarily by container and/or barge, in the
12 coastwise (*i.e.*, domestic) trade. These services are governed by the Merchant Marine Act of
13 1920, commonly referred to as the "Jones Act." 46 U.S.C. § 100 *et. seq.*

14 17. The coastwise trade includes the transportation of merchandise between Hawaii
15 and points in the United States and/or most of its island territories and possessions. *See* 46
16 U.S.C. § 55101 (extending coastwise laws to island territories and possessions except
17 American Samoa, the Northern Mariana Islands, and the U.S. Virgin Islands).

18 18. The Jones Act is a protectionist statute that prohibits any goods "transported by
19 water, or by land and water . . . between points in the United States . . . either directly or via a
20 foreign port," from being shipped unless the vessel "is wholly owned by citizens of the United
21 States for purposes of engaging in the coastwise trade" and has been issued a "certificate of
22 documentation" or is exempt from documentation. 46 U.S.C. § 55102.

23 19. The coastwise trade laws—*i.e.*, the Jones Act—grant an exclusive privilege to
24 certain U.S. owned vessels to engage in the coasting trade concerning shipment of merchandise
25 to or from U.S. territories, possessions, or non-contiguous States, including shipments to and
26 from Hawaii.

27 20. The Jones Act seeks "to protect American shipping industry already engaged in
28 the coastwise trade." *Marine Carriers Corp. v. Fowler*, 429 F.2d 702, 708 (2d Cir. 1970).

1 21. The Jones Act's restriction on the carriage of domestic cargoes to U.S.-owned
2 ships, combined with the relatively small size of these trade routes, results in an oligopolistic
3 markets where only a very small number of carriers serve any route.

4 22. Collusion, market sharing, allocation of customers, restriction of capacity and
5 other anticompetitive conduct is illegal under the Sherman Act, subject to certain exemptions
6 not applicable here. *See* 46 U.S.C. § 40307 (listing exemptions).

7 **The Hawaii Trade Routes Market**

8 **Violations Alleged**

9 23. The Jones Act limits competition in the coastwise market for shipping such that
10 a few carriers dominate these trade lanes. As one analyst explained: "The U.S. Jones Act trade
11 lanes have historically been oligopolies."

12 24. There are numerous barriers to entry for companies attempting to enter the
13 Hawaii trade routes market. Competition is limited by, *inter alia*: the Jones Act; substantial
14 upfront costs; and a substantial lag time between deciding to enter and actually being able to
15 enter because of the need for U.S. built ships—which are limited in supply and take time to
16 construct—and adequate port facilities. Thus, competitors or potential market entrants lack the
17 capacity to increase output in the short run.

18 25. As defendant Horizon explained in its 2007 form 10-K: "Given the limited
19 number of existing Jones Act qualified vessels, the high capital investment and long delivery
20 lead times associated with building a new containership in the U.S., the substantial investment
21 required in infrastructure and the need to develop a broad base of customer relationships, the
22 markets in which we operate have been less vulnerable to over capacity and volatility than
23 international shipping markets."

24 26. The high degree of concentration in the industry makes it easier for competitors
25 to engage in anticompetitive conduct because fewer, repeat providers control the vast majority
26 of any Jones Act shipping route.

27 27. In the Hawaii trade routes, for example, defendants Horizon and Matson account
28 for nearly 100 percent of the market.

1 28. Hawaii shipping services are highly fungible, such that purchasers decide to
2 purchase and competitors compete largely based on price.

3 29. Though fungible between Jones Act carriers, Hawaii shipping services are not
4 readily substitutable for by other methods of transportation. For example, shipping heavy,
5 bulky goods via air freight is prohibitively expensive, and there obviously are no road or rail
6 routes between Hawaii and the mainland United States.

7 30. Price fixing and market allocation is especially pernicious within a highly
8 concentrated, fungible market for which adequate substitutes do not exist, as here in the Hawaii
9 trade routes market.

10 31. The structure of the Hawaii trade routes market is such as to make secret price-
11 fixing feasible. The market is highly concentrated with few sellers, almost all of whom are the
12 defendants. Further, Domestic Noncontiguous Off Shore Trades Services are a highly
13 standardized product. Demand is inelastic and there are barriers to entry in the form of
14 expensive machinery and economies of scale.

15 32. Anti-competitive agreements in Hawaii trade routes can take various forms,
16 including: market allocation; restricting supply; and bunker/fuel and other surcharges.

17 33. Beginning at least as early as May 23, 2004 or earlier, the exact dates being
18 unknown to plaintiff, defendants engaged in a continuing agreement, understanding and
19 conspiracy in restraint of trade to restrict competition, allocate customers, restrict capacity, and
20 otherwise engage in anticompetitive conduct to allocate the market for or engage in
21 anticompetitive conduct concerning the Hawaii shipping services and/or engaged in market
22 allocation of those services in the United States, its territories and possessions in violation of
23 Section 1 of the Sherman Act, 15 U.S.C. § 1.

24 34. The contract, combination and conspiracy consisted of a continuing agreement,
25 understanding and concert of action between the defendants, the substantial terms of which
26 were to allocate the market for or engage in anticompetitive conduct concerning Hawaii
27 shipping services in the United States, its territories and possessions.
28

35. In formulating and effectuating the aforesaid contract, combination or conspiracy, defendants did those things that they unlawfully combined and conspired to do, including, among other things:

a. agreeing to allocate the market and/or customers for Hawaii shipping services;

b. exchanging information on customers and capacity and;

c. monitoring and implementation of the arrangements among cartel members.

36. The activities described above have been engaged in by defendants for the purpose of effectuating the unlawful agreements concerning market allocation, restricting capacity, and other anticompetitive conduct concerning for Hawaii shipping services.

37. Any Jones Act exemptions are not applicable here.

The Hawaii Trade Routes

38. The Hawaii trade routes market is distinct from other Jones Act trade routes.

39. The Hawaii trade routes market is dominated by defendants Matson and Horizon.

40. Defendants have access to industry data (including data from the Port Import Export Reporting Service) concerning the Hawaii trade routes market and participate in trade associations (like the Maritime Cabotage Task Force) which facilitates efficient monitoring of defendants' collusive agreements.

a. Fuel Surcharges

41. In 1999 or earlier, defendants began imposing fuel surcharges, and those surcharges have grown over time. The surcharges are calculated as a percentage of revenue.

42. Defendants agreed that they would set fuel surcharges at identical rates, rates that were divorced from any precompetitive or lawful economic rationale. The surcharges are reflected in the below chart:

Hawaiian Ocean Shipping Rate Increases 1999 to 2007

Company	Approximate Date of Announcement	Fuel Surcharge Increase/ Decrease	Per Container Fee Increase	Terminal Handling Fee Increase (Per Container)
Matson Navigation	10/1999	1 to 1.75%		
<i>Horizon Lines</i>	10/1999	1 to 1.75%		
Matson Navigation	2/2000	1.75 to 2.25%		
<i>Horizon Lines</i>	2/2000	1.75 to 2.25%		
Matson Navigation	4/2000	2.25 to 3.25%		
<i>Horizon Lines</i>	4/2000	2.25 to 3.25%		
Matson Navigation	10/2000	3.25 to 4.25%		
<i>Horizon Lines</i>	10/2000	3.25 to 4.25%		
Matson Navigation	11/2001	4.25 to 3.25%		
<i>Horizon</i>	11/2001	4.25 to 3.25%		

Company	Approximate Date of Announcement	Fuel Surcharge Increase/ Decrease	Per Container Fee Increase	Terminal Handling Fee Increase (Per Container)
<i>Lines</i>				
Matson Navigation	5/2002	3.25 to 4.75%		
<i>Horizon Lines</i>	5/2002	3.25 to 4.75%		
Matson Navigation	10/2002	4.75 to 6.00%		
<i>Horizon Lines</i>	10/2002	4.75 to 6.00%		
Matson Navigation	3/2003	6.00 to 7.50%		
<i>Horizon Lines</i>	3/2003	6.00 to 7.50%		
Matson Navigation	5/2004	7.5 to 8%		
<i>Horizon</i>	5/2004	7.5 to 8%		

1	Company	Approximate	Fuel Surcharge	Per Container	Terminal Handling
2		Date of	Increase/	Fee Increase	Fee Increase (Per
3		Announcement	Decrease		Container)
4					
5					
6	<i>Lines</i>				
7					
8	Matson	6/2004	8 to 8.8%		
9	Navigation				
10	<i>Horizon</i>	6/2004	8 to 8.8%		
11	<i>Lines</i>				
12					
13	Matson	10/2004	8.8 to 9.2%		
14	Navigation				
15	<i>Horizon</i>	10/2004	8.8 to 9.2%		
16	<i>Lines</i>				
17					
18	Matson	4/2005	9.2 to 10.5%		
19	Navigation				
20	<i>Horizon</i>	4/2005	9.2 to 10.5%		
21	<i>Lines</i>				
22					
23	Matson	7/2005	10.5 to 11.5%		
24	Navigation				
25	<i>Horizon</i>	7/2005	10.5 to 11.5%		
26	<i>Lines</i>				
27					
28					

Company	Approximate Date of Announcement	Fuel Surcharge Increase/ Decrease	Per Container Fee Increase	Terminal Handling Fee Increase (Per Container)
Matson Navigation	10/2005	11.5 to 13%		
<i>Horizon Lines</i>	10/2005	11.5 to 13%		
Matson Navigation	11/2005		\$125/Westbound \$75/Eastbound Approx. 3.9%	\$60/Westbound \$30/Eastbound Approx. 22%
<i>Horizon Lines</i>	11/2005		\$125/Westbound \$75/Eastbound	\$60/Westbound \$30/Eastbound
Matson Navigation	12/2005	13 to 15%		
<i>Horizon Lines</i>	12/2005	13 to 15%		
Matson Navigation	3/2006	15 to 18.5%		
<i>Horizon Lines</i>	3/2006	15 to 18.5%		
Matson	5/2006	18.5 to 21.25%		

Company	Approximate Date of Announcement	Fuel Surcharge Increase/ Decrease	Per Container Fee Increase	Terminal Handling Fee Increase (Per Container)
Navigation				
<i>Horizon Lines</i>	5/2006	18.5 to 21.25%		
Matson Navigation	9/2006	21.25 to 19.75%		
<i>Horizon Lines</i>	9/2006	21.25 to 19.75%		
Matson Navigation	10/2006	19.75 to 18.75%		
<i>Horizon Lines</i>	10/2006	19.75 to 18.75%		
Matson Navigation	11/2006		\$100/Westbound \$50/Eastbound	\$150/Westbound \$75/Eastbound
<i>Horizon Lines</i>	11/2006		\$100/Westbound \$50/Eastbound	\$150/Westbound \$75/Eastbound

Company	Approximate Date of Announcement	Fuel Surcharge Increase/ Decrease	Per Container Fee Increase	Terminal Handling Fee Increase (Per Container)
Matson Navigation	1/2007	18.75 to 17.5%		
<i>Horizon Lines</i>	1/2007	18.75 to 17.5%		
Matson Navigation	2/2007	17.5 to 19.5%		
<i>Horizon Lines</i>	2/2007	17.5 to 19.5%		
Matson Navigation	4/2007	19.5 to 20.75%		
<i>Horizon Lines</i>	4/2007	19.5 to 20.75%		
Matson Navigation	5/2007	20.75 to 22.5%		
<i>Horizon Lines</i>	5/2007	20.75 to 22.5%		
Matson Navigation	7/2007	22.5 to 24%		
<i>Horizon</i>	7/2007	22.5 to 24%		

Company	Approximate Date of Announcement	Fuel Surcharge Increase/ Decrease	Per Container Fee Increase	Terminal Handling Fee Increase (Per Container)
<i>Lines</i>				
Matson Navigation	10/2007	24 to 26%		
Horizon Lines	10/2007	24 to 26%		
Matson Navigation	11/2007	26 to 29%		
Horizon Lines	11/2007	26 to 29%		

43. These lockstep surcharges calculated as a percentage of revenue make no economic sense because defendants have different cost structures and utilization rates. For example, defendants Horizon and Matson have different operating expenses and margins. If defendants' surcharges were a reflection of economics rather than collusion, the surcharges would not have moved in lockstep when defendants' margins were different.

b. Artificial Capacity Limitations

44. Defendants agreed to limit capacity and thereby increase rates to supracompetitive levels.

45. Defendants effectuated this agreement by carrying—at vastly discounted rates—each other's containers. For example, when Horizon had more customers than it could handle on its ships, Matson carried containers that had been shipped with Horizon, and *vice versa*.

1 46. Absent this agreement, the only way that either competitor would have been
2 able to maintain its current level of business would have been by adding capacity. This
3 additional capacity, however, would have had the (procompetitive) effect of lowering prices.

4 47. Defendants have collaborated—not competed—with each other to stabilize the
5 amount of shipping services available, and thereby maintain supracompetitive prices

6 48. Unsurprisingly, the cost of shipping to Hawaii has risen substantially in recent
7 years, in part due to defendants' collusive anticompetitive agreements.

8 **Government Antitrust Investigation**

9 49. On April 17, 2008, it was disclosed that the United States Department of Justice
10 began an investigation into the Domestic Noncontiguous Shore Trades Services industry in a
11 similar market: the trade routes between Puerto Rico and the continental United States. On or
12 about April 17, defendants Horizon and Matson both disclosed that either warrants to search
13 their premises had been issued or that they had been subpoenaed in connection with the DOJ's
14 investigation. The investigation is not limited to the Puerto Rico market, and defendant Matson
15 is being investigated by the DOJ even though it has no presence in the Puerto Rico market.

16 50. To obtain search warrants the United States had to have probable cause,
17 accepted by a court, to believe that it would obtain evidence of an antitrust violation from the
18 search warrant – that is, the United States had to have evidence sufficient to warrant a person of
19 reasonable caution to believe that raiding the offices of a seemingly lawful business would
20 uncover evidence of antitrust violations and the court had to have examined and accepted that
21 evidence. That belief, which was recounted in sworn affidavit or by testimony, must be
22 grounded on reasonably trustworthy information.

23 **Class Action Allegations**

24 51. Plaintiff brings this action on behalf of itself and as a class action under the
25 provisions of Rule 23(a) and (b)(2) & (b)(3) of the Federal Rules of Civil Procedure on behalf
26 of all members of the following class:
27
28

1 All persons (excluding governmental entities, defendants, co-
2 conspirators, other sellers or providers of Hawaii shipping
3 services, and the present and former parents, predecessors,
4 subsidiaries and affiliates of the foregoing) who purchased
5 Hawaii shipping services directly from any of the defendants, or
6 any present or former parent, subsidiary or affiliate thereof, at
7 any time during the period from at least May 23, 2004, or earlier,
8 until the effects of defendants' anticompetitive conduct cease.

9
10 52. Plaintiff believes that there are hundreds or thousands of class members as
11 above described, the exact number and their identities being known by defendants.

12 53. The class is so numerous and geographically dispersed that joinder of all
13 members is impracticable.

14 54. There are questions of law and fact common to the class, which questions relate
15 to the existence of the conspiracy alleged, and the type and common pattern of injury sustained
16 as a result thereof, including, but not limited to:

17 a. Whether defendants engaged in a combination and conspiracy among
18 themselves to allocate the market for or engage in other anticompetitive conduct concerning
19 Hawaii shipping services.

20 b. The identity of the participants in the conspiracy;

21 c. The duration of the conspiracy alleged in this complaint and the nature
22 and character of the acts performed by defendants in furtherance of the conspiracy;

23 d. Whether the alleged conspiracy violated Section 1 of the Sherman Act;

24 e. Whether the conduct of defendants, as alleged in this complaint, caused
25 injury to the business and property of plaintiff and other members of the class;

26 f. The effect of defendants' conspiracy on the prices of Hawaii shipping
27 services sold during the Class Period; and

28 g. The appropriate measure of damages sustained by plaintiff and other
members of the class.

55. Plaintiff is a member of the class, plaintiff's claims are typical of the claims of
the class members, and plaintiff will fairly and adequately protect the interests of the members
of the class.

1 56. Plaintiff's interests are coincident with and not antagonistic to those of the other
2 members of the class.

3 57. Plaintiff is represented by counsel who is competent and experienced in the
4 prosecution of antitrust and class action litigation.

5 58. The prosecution of separate actions by individual members of the class would
6 create a risk of inconsistent or varying adjudications.

7 59. Defendants have acted, and refused to act, on grounds generally applicable to
8 the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

9 60. The questions of law and fact common to the members of the class predominate
10 over any questions affecting only individual members, including legal and factual issues
11 relating to liability and damages.

12 61. A class action is superior to other available methods for the fair and efficient
13 adjudication of this controversy.

14 Trade and Commerce

15 62. The activities of defendants, as described in this complaint, were within the flow
16 of, and substantially affected, interstate commerce.

17 63. During the time period covered by this complaint, defendants marketed and sold
18 Hawaii shipping services.

19 64. Defendants, and each of them, have used instrumentalities of interstate
20 commerce to market and sell Hawaii shipping services.

21 65. Defendants have marketed and sold Hawaii shipping services in a continuous
22 and uninterrupted flow of interstate commerce to customers located in states other than the
23 states in which defendants market and sell such services.

24 Fraudulent Concealment

25 66. Plaintiff had no knowledge of defendants' unlawful self-concealing conspiracy
26 and could not have discovered the contract, combination or conspiracy until April 17, 2008 by
27 the exercise of due diligence because of the deceptive practices and techniques of secrecy
28 employed by defendants to avoid detection of, and fraudulently conceal, their contract,
combination or conspiracy.

1 67. Because the contract, combination or conspiracy was kept secret by defendants,
2 Plaintiff was unaware of the anticompetitive conduct concerning of Hawaii shipping services
3 that were secretly agreed upon as alleged herein. It was not until April 17, 2008, the date on
4 which it was disclosed that the Federal Bureau of Investigation executed search warrants on the
5 premises of defendant Horizon, that plaintiff became aware, or could have become aware with
6 the exercise of reasonable diligence, of defendants' anticompetitive conduct.

7 68. As a result of the fraudulent concealment of the conspiracy, plaintiff asserts the
8 tolling of the applicable statute of limitations affecting the right of action by plaintiff.

9 **COUNT I**

10 **Unlawful Price Setting in Violation of Sherman Act § 1, 15 U.S.C. § 1**

11 69. Plaintiff incorporates by reference as if fully set forth herein the allegations
12 contained in the preceding paragraphs of this complaint.

13 70. Defendants colluded and agreed in unlawful restraint of trade to fix prices and
14 surcharges and allocate the Hawaii trade routes market.

15 71. Defendants' unlawful conduct resulted in artificially high supra-competitive
16 prices charged by defendants to plaintiff and the members of the class of direct purchasers of
17 Hawaii shipping services.

18 72. Plaintiff and members of the class had to pay more for Hawaii shipping services
19 than they would have paid in a competitive marketplace, unfettered by defendants' collusive
20 and unlawful price-fixing.

21 73. Plaintiffs seek to recover for these overcharge damages.

22 74. As a direct and proximate result of defendants' scheme, plaintiff and the
23 members of the class have been injured and financially damaged in their respective businesses
24 and property, in amounts which are presently undetermined. Plaintiff's injuries consist of
25 paying higher prices to purchase Hawaii shipping services than it would have paid absent
26 defendants' conduct. Plaintiff's injuries are of the type the antitrust laws were designed to
27 prevent and flow from that which makes defendants' conduct unlawful.

28 **Jury Trial Demand**

1 Pursuant to Fed. R. Civ. P. 38(b), plaintiff demands a trial by jury of all of the claims
2 asserted in this complaint so triable.

3 **Prayer For Relief**

4 **WHEREFORE**, Plaintiff prays as follows:

5 A. That the Court determine that this action may be maintained as a class action
6 under Rule 23 of the Federal Rules of Civil Procedure.

7 B. That the contract, combination or conspiracy, and the acts done in furtherance
8 thereof by defendants, be adjudged to have been in violation of Section 1 of the Sherman Act,
9 15 U.S.C. § 1.

10 C. That judgment be entered for plaintiff and members of the class against
11 defendants for three times the amount of damages sustained by plaintiff and the class as
12 allowed by law, together with the costs of this action, including reasonable attorneys' fees.

13 D. That defendants, their affiliates, successors, transferees, assignees, and the
14 officers, directors, partners, agents and employees thereof, and all other persons acting or
15 claiming to act on their behalf, be permanently enjoined and restrained from, continuing to
engage in the anticompetitive conduct described herein.

16 E. That plaintiff and members of the class have such other, further and different
17 relief as the case may require and the Court may deem just and proper under the circumstances.

18 Dated: June 18, 2008

19
20 Respectfully submitted,

21 **KAPLAN FOX & KILSHEIMER LLP**

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